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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Cox Virginia Telcom, Inc.	)	
Pursuant to Section 252(e)(5) of the	)	CC Docket No. 00-249
Communications Act for Preemption	)	
of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	
Interconnection Disputes with	)	
Verizon-Virginia, Inc. and for Arbitration	)	

INITIAL BRIEF OF COX VIRGINIA TELCOM, INC.

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SUMMARY

Cox has worked diligently for more than two years to negotiate an interconnection agreement with Verizon, but ten issues remain. For each issue, Cox has proposed contractual language consistent with the law, common sense and the parties' obligations as co-carriers, while Verizon has not. Consequently, the Commission should adopt the language proposed by Cox in its entirety.

Issue I-1 (Points of Interconnection)

Verizon's GRIP and VGRIP proposals violate Section 251(c)(2) of the Communications Act and Sections 51.305(a)(2) and 51.703(b) of the Commission's rules because they would make Cox, not Verizon, responsible for the costs of delivering Verizon-originated traffic to Cox.[1] Case law confirms this conclusion. The proposals also violate Section 51.711(a)(3) of the Commission's rules because they would require Cox's switches to be treated as end offices for purposes of reciprocal compensation.

There also are other good reasons for the Commission to reject GRIP and VGRIP. Cox's interconnection proposal imposes very few costs on Verizon, while either of Verizon's proposals would impose significant costs on Cox. In addition, neither Verizon proposal is fully developed, and there are significant issues – including the calculation of transport offsets – that Verizon has not addressed. GRIP is subject to many infirmities, including the arbitrary nature of the 25-mile threshold and the way the local calling area threshold could subject different carriers to different regimes even when they are located the same distance from a Verizon switch. VGRIP could subject a CLEC to changing obligations as Verizon's network architecture changes, would immunize Verizon from bearing *any* transport costs in a single-tandem LATA, would waste

[1] As described in Cox's Objection and Request for Sanctions, Verizon's VGRIP proposal, as well as its new language for Issues I-2 and I-9, should not be considered in this proceeding. By filing this brief, Cox does not waive any of the rights asserted in that pleading.

collocation space and, in the November version of the proposal, would give Verizon rights that it is not entitled to under the law.

Issue I-2 (Distance Sensitive Rates)

Verizon's proposal to bar Cox from charging distance-sensitive rates for transport of Verizon-originated traffic over Cox entrance facilities should be rejected. Contrary to Commission requirements, Verizon's proposal would create an asymmetrical relationship in which Verizon could charge distance-sensitive rates while Cox could not. Given that Verizon has agreed that the approximate four mile distance between its facilities and Cox's switch is reasonable and that Verizon has not argued that Cox's rates are unreasonable, there is no basis for this provision. Further, existing provisions for mid-span meets and for multiple IPs preclude any possibility that Verizon will be harmed. The new language proposed in Verizon's November JDPL, which would give Verizon the sole right to designate IPs, is unsupported by the record and contrary to the Commission's determination that CLECs can choose their own points of interconnection.

Issue I-3 (Verizon Collocation at Cox Switch)

There is no basis for Verizon's request that it be granted collocation at Cox facilities. This proposal violates the Communications Act and the Commission's rules, which limit the physical collocation obligation to incumbent LECs, and the intent of the 1996 Act to further local telephone competition. Further, Verizon has shown no need for physical collocation. This proposal should be dismissed summarily.

Issue I-4 (Direct End Office Trunking)

The parties disagree about when to implement direct end office trunking. While Cox proposes direct trunking at a threshold of three DS-1s over a period of three months, Verizon

proposes a hair-trigger threshold of a single DS-1. Verizon's proposal violates established FCC rules and is unsupported by the facts.

Verizon's proposal violates Section 251(c)(2) of the Act and Section 51.305(a)(2) of the Commission's rules because it would prohibit Cox from interconnecting at any technically feasible point. Verizon has made no showing that tandem interconnection above the DS-1 level is technically infeasible and, in fact, has addressed "tandem exhaust" by installing new tandems.

Verizon's proposal also is unreasonable. The increase in tandems is proportionate to the growth in Verizon's traffic and Verizon has not proposed to impose the DS-1 limit on CMRS providers or IXCs, which account for many more trunks than CLECs. Verizon also has not employed other solutions to tandem exhaust, including increasing its own direct trunking and reducing underutilized trunks. The Cox proposal adopts a reasonable threshold for direct trunking that is aligned with the capacity of the facilities Cox deploys and would not require direct trunking as a result of one-time spikes in traffic.

Issue I-7 (Verizon Outbound Forecasts)

Verizon would have Cox develop both Cox's and Verizon's outbound forecasts. This proposal is inconsistent with the way Verizon treats other carriers, including ILECs, CMRS providers, IXCs and even start-up CLECs, and inconsistent with every interconnection agreement Cox has entered into with any other carrier across Cox's nine-state footprint. There is no reason to believe Cox is in any better position than Verizon to forecast Verizon's outbound traffic, especially because the most significant data is in Verizon's hands and because Cox has agreed to provide Verizon with information about changes in Cox's business plans. Further, Verizon's proposal would impose Verizon's engineering costs on Cox, which is inconsistent with the parties' status as co-carriers.

Issue I-5 (ISP-Bound Traffic)

Cox's language fully implements the *ISP-Bound Traffic Order,* while Verizon's language would require extensive further negotiation. The history of intercarrier compensation shows that it is critical for interconnection agreements to have unambiguous terms in this area. Verizon's approach therefore is a recipe for disaster.

Further, given the history of these issues, the Commission should adopt Cox's change of law provision, which ensures that changes in the compensation for ISP-bound traffic are addressed. The Commission should reject Verizon's special audit provision, which would give Verizon the sole, unlimited right to audit. The existing audit provision gives both parties equal audit rights and is sufficient to address Verizon's concerns.

Issue I-6 (Determinations of Local and Toll Calls)

Verizon wants to abandon the standard practice of rating calls by comparing NPA-NXXs in favor of somehow discerning the "actual" originating and terminating points. This proposal is based on flawed reasoning and could not be implemented if it were adopted.

Verizon assumes it is abusive for other carriers not to duplicate Verizon's network. This proposition obviously is false. Verizon's witness agreed it would be inefficient for CLECs to take the steps necessary to qualify a call as "local" under Verizon's theory. Further, it is impossible to implement Verizon's proposal. No witness identified any way other than NPA-NXX comparisons to rate calls. Without a way to make the determinations Verizon demands, the Commission cannot adopt this proposal.

Issue I-8 (CPNI Monitoring)

Verizon has not demonstrated any need to monitor Cox's use of CPNI, and the risks of such monitoring are significant. Verizon agrees that Cox is responsible for complying with

CPNI requirements, that there have been no complaints about Cox's use of CPNI and that Verizon has not been sanctioned for any CPNI violations by CLECs. Thus, Verizon is not at risk. However, Cox would be at risk if Verizon monitored Cox's use of CPNI, because Verizon would have access to sensitive information about Cox's operations. This balance of risks shows that Verizon's proposal should not be adopted.

Issue I-9 (Cox Price Caps)

Verizon has proposed to use its rates as a cap on Cox's prices. Both the original version of this proposal and the new version in the November JDPL are unnecessary and unlawful. First, Verizon is protected against high rates by existing mechanisms and, in fact, could not cite any examples of current unreasonable Cox rates. Second, Verizon's rates are not an appropriate measuring stick because other ILECs charge higher rates for certain services and because Verizon has not proved any relationship between its rates and Cox's costs. Third, Verizon's new proposal is flawed because there is no way for Cox to obtain the approval that would be required for higher rates. Finally, there is no authority in the Communications Act or Virginia law for an interconnection agreement provision capping CLEC rates.

Issue I-11 (OSS Termination)

Verizon seeks the ability to terminate access to Verizon's OSS if Cox misuses that access. Verizon has shown no need for special termination rights. There have been only a few minor incidents of OSS abuse, none involving Cox. Indeed, Verizon already can suspend OSS access or terminate the entire agreement for OSS abuse. Finally, giving Verizon the right to terminate access could create competitive risks, especially because Verizon has not specified how it would address purported abuses under this provision.

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INITIAL BRIEF OF COX VIRGINIA TELCOM, INC.

Cox Virginia Telcom, Inc. ("Cox") hereby submits its initial brief in the above-referenced proceeding. For the reasons described below, the Commission should grant Cox's Petition for Arbitration and adopt Cox's position on each of the ten issues that are unresolved between Cox and Verizon Virginia, Inc. ("Verizon").[1]

I. Introduction

Although this proceeding focuses on discrete issues in the interconnection agreement between Cox and Verizon, the root of every issue is Verizon's unwillingness to accommodate the development of local telephone competition in Virginia. Although Verizon's counsel has said that Verizon "steps up" to its obligations, the record shows that Verizon wants to shirk all responsibilities it has as a co-carrier, to force its competitors to duplicate Verizon's inefficient network structure and to otherwise disadvantage those competitors in every way it can.[2]

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[1] Cox's initial Petition for Arbitration sought to have the Commission resolve eleven issues, but the parties were able to reach agreement on Issue I-10, which related to the circumstances under which the interconnection agreement would be terminated.

[2] Tr. at 38 (Kelly Faglioni) (Verizon opening statement).

Verizon's intentions are reflected in several ways. For instance, it consistently seeks to impose obligations on Cox and other CLECs that it does not impose on other ILECs, on interexchange carriers ("IXCs") or on commercial mobile radio service ("CMRS") providers. These obligations include a requirement that Cox implement direct end office trunking at an inefficient traffic threshold (Issue I-4) and that Cox provide forecasts of both Verizon's traffic delivered to Cox and Cox's traffic delivered to Verizon (Issue I-7).

Verizon's proposals also seek unreasonable terms and conditions.[3] Often, Verizon requests that the Commission adopt provisions that are contrary to settled law, such as its request for physical collocation at Cox's switch and its demand that Cox allow Verizon to designate "geographically relevant" interconnection points ("IPs"). In other cases, Verizon seeks provisions that are inconsistent with standard industry practices, such as its proposal to abandon the use of NXX codes in determining whether a call is local or toll. To add insult to injury, some of Verizon's proposals are contrary to common sense. Verizon wants Cox to provide a forecast of Verizon's traffic, which Verizon then says it is free to ignore. Verizon wants a right to monitor Cox's use of customer proprietary network information ("CPNI"), even though Cox never has abused CPNI and Verizon never has been sanctioned for a third party's actions. Verizon even wants to leave significant elements of the implementation of the *ISP-Bound Traffic Order* to be determined by the parties only after this agreement is executed.[4]

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[3] In three cases – Issues I-1, I-2 and I-9 – Verizon has made proposals in the November 5 Joint Decision Point List (the "November JDPL") different than it made at any earlier time in this proceeding. Cox has filed an Objection and Request for Sanctions (the "Objection"), which asks the Commission to require Verizon to return to the positions set forth in the September 18 Joint Decision Point List (the "September JDPL") on each of these issues. Although this brief addresses the contractual language in both the September JDPL and the November JDPL, Cox does not waive any of the rights or claims asserted in the Objection and Request for Sanctions as to any of the three affected issues.

[4] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order,* 16 FCC Rcd. 9151 (2001) ("*ISP-Bound Traffic Order*").

Cox's approach to this agreement has been to work towards reasonable accommodations of the legitimate needs of both parties, while staying within the bounds of applicable law. Despite Cox's best efforts, ten issues remain unresolved. Cox continues to believe that the best approach is to seek a reasonable, concrete resolution for each issue. Thus, Cox proposes to determine whether traffic is local or toll by using the industry standard method of comparing NXX codes; Cox has agreed to permit Verizon to install its own direct trunks at traffic levels far below the economic breakeven point; Cox has agreed to provide the information that Verizon would need to prepare a trunk forecast; and Cox has proposed language to fully implement the Commission's *ISP-Bound Traffic Order,* with safeguards in case that order is overturned or modified.

For each of the ten issues in this proceeding, Cox has made a proposal that is consistent with the terms of the Communications Act of 1934 (the "Act"), the Commission's rules, industry practice, common sense and its obligations as a co-carrier. As described above, Verizon's proposals do not meet these criteria. Consequently, the Commission should adopt Cox's position on each of the issues before it.

II. The Commission Should Apply Specific Standards in Deciding the Issues in This Proceeding.

This proceeding marks the first time the Commission has been required to exercise its authority to arbitrate interconnection agreements under Section 252(e)(5) of the Communications Act. It is especially important, in this context, that the Commission adopt standards for its decisions consistent with its role as an arbitrator, as distinguished from its role as a policy-making body under other parts of the Act. These standards should include the following:

First, where there is settled law on a particular topic, the Commission should apply that law and not use the arbitration to reconsider existing requirements. The Commission has

recognized that it sits in this proceeding in the place of the Virginia State Corporation Commission (the "Virginia SCC"), which is not empowered to overturn or modify FCC rules.[5] As the Arbitrator explained at the July 10 status conference:

> . . .we will not, in fact, reconsider an issue that the [C]ommission may have pending before it to reconsider. We will look at the existing state of the law and apply that state of the law. And we won't take this opportunity to do what the [C]ommission could do. We will do that as the [C]ommission and not in the context of this arbitration to the extent that we change the law.[6]

The most significant consequence of this Commission commitment is that when a clear legal requirement applies to an issue in this proceeding, that requirement must dictate the result of the arbitration as to that issue. It does not matter if Verizon claims or even demonstrates that application of a particular rule to its situation is unequal or imposes costs that Verizon does not wish to bear. The Commission must apply the existing rules and any related FCC precedent interpreting those rules.

Of course, where there are issues concerning interpretations of rules that have not otherwise been decided, the Commission has the same discretion as any other regulatory agency. The Commission should recognize, however, that as the entity that promulgated the rules, it is in the best position to interpret them. For this reason, Cox believes that, where the Commission has not already decided an issue, the Commission should not give much weight to state interpretations of its rules, and particularly should not give weight to interpretations that are contrary to related FCC precedent.[7]

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[5] Prehearing Conference, July 10, 2001, Tr. at 13 (Dorothy Attwood) (stating the FCC is "striving to be implementing our duties as a state would").
[6] *Id.*
[7] It is, however, reasonable for the Commission to give some weight to state decisions on topics not addressed by FCC rules or the statute.

If no clear legal requirement applies, the Commission must then make a judgment based on the evidence in this proceeding. In those cases, the Commission should submit Verizon's claims to particular scrutiny, for two distinct reasons. First, Verizon demonstrated throughout the hearing that it will interpret its obligations under its interconnection agreements as narrowly as possible and will do no more to permit the development of local competition than it is required to do.[8] While this grudging acceptance of its obligations may come as no surprise, it does affect the extent to which the Commission can credit Verizon's claims in this proceeding. As the Commission often has recognized, Congress intended that passage of the 1996 Act would fully open local telephone markets to competition.[9] For that reason, the Commission should require Verizon to demonstrate that a provision it advocates is necessary to prevent a real harm, and that there are no countervailing risks to competition, before adopting Verizon's position.

Second, Verizon's proposals should be scrutinized because many of those proposals do not contain all of the provisions necessary for them to be effectuated. Where Verizon has left elements of a proposal to be negotiated or to be determined at a later date, adopting Verizon's proposal is likely to lead to further disagreement among the parties, rather than full implementation of a working interconnection agreement. Such proposals comprise a recipe for repeated, long-term conflict between the parties, conflict that will benefit only Verizon. While there are many details that parties have to work out over time, questions such as rates to be charged, how offsets will be calculated and exactly how the parties will determine whether a call is local or toll should not be among them. Verizon, therefore, should bear a heavy burden to justify any proposal that leaves such issues to be determined after the agreement is signed.

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[8] *See, e.g.,* Tr. at 38, 39, 40, 41-43 (Faglioni), 58, 61 (Nancy Gilligan), 86-87 (Christos Antoniou), 1765-66 (Steven J. Pitterle); Verizon Exhibit 23.

[9] Telecommunications Act of 1996, P.L. 104-104, Preamble (describing purposes of Act).

III. Network Architecture Issues

Four of Cox's ten issues relate to network architecture. As will be seen below, three of these issues involve questions concerning Verizon's ability to dictate the network architecture that Cox will deploy. In each case, Verizon's position not only is contrary to the law governing interconnection between ILECs and CLECs, but also is seriously flawed in other ways. These issues, along with a fourth issue concerning forecasting, illustrate Verizon's desire to impose all the burdens of the ILEC-CLEC relationship on the CLEC, rather than treating CLECs as co-carriers.

A. Verizon Cannot Specify the Points at Which Responsibility for Traffic Is Handed Off to Cox. [Issue I-1]

For Issue I-1, Verizon has made two different proposals in this proceeding. First, it has proposed what it calls "Geographically Relevant Interconnection Points" ("GRIP") to Cox. Verizon also has made a somewhat different proposal, which it calls "Virtual Geographically Relevant Interconnection Points" ("VGRIP") to WorldCom and AT&T, and has attempted to substitute VGRIP for GRIP in its November JDPL filing as to Cox.[10] Under either GRIP or VGRIP, Cox would be responsible for all of the costs of transporting local calls from Cox's customers to Verizon's network, but Verizon would be responsible only for the costs of transport to Verizon-designated "interconnection points" ("IPs"), which typically would be located at Verizon's switches. Under Cox's proposal, by contrast, IPs would be established at all central offices between which the parties exchanged calls and each carrier would be responsible for the costs of carrying calls from its own customers to the other carrier's IP.

[10] Verizon's attempt to substitute this language is one of the subjects of the Objection. To the extent the Commission grants the relief requested in the Objection, the discussion of VGRIP in this section will be moot.

Both GRIP and VGRIP violate specific FCC rules and decisions and therefore cannot be adopted in this proceeding. In addition, adopting either of Verizon's proposals would be arbitrary and unreasonable. Consequently, the Commission should adopt Cox's proposed language for this issue.

1. Both GRIP and VGRIP Are Contrary to Established Rules and FCC Decisions.

Under Section 251(c)(2) of the Communications Act, CLECs are entitled to select any technically feasible point of interconnection within an ILEC's network.[11] The FCC's rules implementing this provision not only require ILECs to offer interconnection at any technically feasible point, but also forbid ILECs from attempting to evade this requirement, by imposing charges for transporting the ILEC's traffic to the CLEC or through other means.[12]

In interpreting Section 51.703, the Commission has held specifically that an ILEC is responsible – both physically and financially – for delivering its traffic to the point of interconnection with another carrier, and this conclusion has been affirmed by the U.S. Court of Appeals.[13] As the Commission found in the *TSR Wireless* decision, a LEC cannot avoid its obligations under Section 51.703(b) by characterizing its charges as "facilities" charges, rather than "transport" charges.[14] Moreover, the FCC has affirmed, as recently as January of this year,

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[11] 47 U.S.C. § 251(c)(2).
[12] *See* 47 C.F.R. §§ 51.305(a)(2) (specifying technically feasible points of interconnection, including tandems and end offices); 51.703(b) (forbidding any LEC from "assess[ing] charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network").
[13] TSR Wireless, LLC v. U S West Communications, Inc., *Memorandum Opinion and Order,* 15 FCC Rcd 11166 (2000) (*"TSR Wireless"*) (holding that LECs may not charge for either transport or facilities for traffic they deliver to paging companies), *aff'd sub nom. Qwest Corporation v. FCC,* 252 F.3d 462 (D.C. Cir. 2001).
[14] *TSR Wireless,* 15 FCC Rcd at 11181.

that its "rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network."[15]

Both GRIP and VGRIP violate these requirements. Under either proposal, if an interconnection point was not "geographically relevant," as defined by Verizon, Cox would be required to charge only end office reciprocal compensation rates (regardless of whether Cox's switch qualified as a tandem) and further reduce its reciprocal compensation by an amount equal to Verizon's transport rates.[16] Although Verizon apparently has not reached a conclusion as to how the transport reduction would be calculated or applied, the net effect is that Cox would be denied tandem switching compensation and charged transport from the Verizon-defined IP to the Cox switch.[17] This plainly violates Section 51.703(b) as interpreted by the FCC.

Further, GRIP and VGRIP violate Verizon's obligation to permit interconnection at any technically feasible point designated by Cox. This obligation is established under both Section 251(c)(2) of the Act and Section 51.305(a)(2) of the rules. To the extent Verizon imposes additional costs on Cox (or any other CLEC) based solely on the point of interconnection, then Verizon is interfering with Cox's right to choose that point of interconnection. That, of course, is the entire intent of both GRIP and VGRIP, because both proposals require Cox to bear additional costs under any scenario: Either Cox bears the cost of bringing facilities to Verizon's preferred locations, so that the points of interconnection and IPs are the same, or it bears the costs of transport from the IPs to the physical POI.

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[15] Joint Application by SBC Communications, Inc., *et al.*, for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, *Memorandum Opinion and Order*, 16 FCC Rcd 6237, 6360 (2001) (footnote omitted) ("*Kansas/Oklahoma 271 Order*").

[16] September JDPL, Network Architecture at 11-14 (GRIP); November JDPL, Network Architecture at 21-23 (VGRIP); *see also* Cox Petition, Exhibit 2 at 19 (Section 5.3 of proposed contract language, applying tandem rates for reciprocal compensation if Cox switch serves a geographic area comparable to that served by Verizon's tandem).

[17] Tr. at 1361-62 (Peter J. D'Amico).

GRIP and VGRIP both also violate the Commission's rules governing treatment of CLEC switches for purposes of calculating reciprocal compensation. Under Section 51.711(a)(3) of the rules, a CLEC switch shall be treated as a tandem switch if it "serves a geographic area comparable to the area served by the incumbent LEC's tandem switch."[18] Both GRIP and VGRIP, however, would limit Cox to collecting the end office rate for reciprocal compensation, based solely on the point of interconnection.[19] Because this provision is contrary to Section 51.711(a)(3), it cannot be approved in an arbitration proceeding.

Verizon argues in its Answer that GRIP is consistent with the Communications Act and the FCC's rules because the *Local Competition Order* permits ILECs to impose additional charges for "a 'technically feasible' but expensive interconnection."[20] Verizon also points to a similar statement later in the order.[21] Verizon entirely misconstrues these statements. Among other things, Verizon's theory is contradicted by the specific requirements of Section 51.711(a)(3).[22] Further, the Commission's statements in the paragraphs cited by Verizon concerning the "location" or "point on the network" of interconnection refer not to a geographic location, but to logical locations, such as line side, trunk side, at a tandem or at an end office.[23] Even if that were not obvious from the *Local Competition Order* itself, the FCC's subsequent decisions, including *TSR Wireless* and the *Kansas/Oklahoma Section 271 Order,* demonstrate

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[18] 47 C.F.R. § 51.711(a)(3).
[19] September JDPL, Network Architecture, at 13-14 (". . . Verizon shall pay only the End Office Reciprocal Compensation rate for the relevant NXX . . ."); November JDPL, Network Architecture, at 27 (". . . Verizon shall pay only the applicable Reciprocal Compensation Traffic End Office call termination rate . . .").
[20] Answer at 7, quoting *Local Competition Order,* 11 FCC Rcd at 15603.
[21] Answer at 7, quoting *Local Competition Order,* 11 FCC Rcd at 15608.
[22] Verizon's Answer asserts that Section 51.711(a)(3) has to be read in the context of the other portions of the *Local Competition Order.* There is, however, nothing in the *Local Competition Order* that indicates that distance has anything to do with the portions of the order concerning "expensive" interconnection. Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*").
[23] *Id.* at 15608-09.

that the originating carrier is responsible for the costs of sending traffic to the POI even when that point is relatively distant. Thus, there is no basis for Verizon's legal theory.

2. Adopting Either GRIP or VGRIP Would Be Arbitrary and Unreasonable.

Although both GRIP and VGRIP are inconsistent with basic legal requirements, there also are good policy and factual reasons for the Commission to reject both proposals. Despite Verizon's claims, the burdens it bears for "distant" interconnection are low, while the costs of GRIP and VGRIP to Cox would be high.[24] Further, both GRIP and VGRIP would lead to arbitrary results, and neither is a fully developed proposal that the Commission could adopt.

First, despite its claims, Verizon does not bear any significant costs as a result of CLEC choices of points of interconnection.[25] As Verizon admitted during the hearing, it uses existing facilities to transport traffic to CLECs, so there is little or no actual difference in the costs it bears for "nearby" or "distant" interconnection.[26] In addition, CLECs generate relatively little traffic compared to the total traffic on the Verizon network, which means that the relative costs of transporting traffic to those CLECs are quite small.[27] Consequently, even in the worst case scenario, the actual burden of standard interconnection arrangements is insignificant.

In Cox's case, the burden on Verizon of standard interconnection arrangements is even lower, because Cox and Verizon have implemented a midspan meet, and the agreed-to terms of their interconnection agreement include provisions for additional midspan meets.[28] As Verizon

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[24] For the vast majority of interconnection arrangements between Cox and Verizon, the distances between the Verizon switch and the Cox IP are within the parameters Verizon has proposed for "geographical relevance." Cox Exhibit 1, Direct Testimony of Prof. Francis R. Collins, Ph.D. at 9 ("Collins Direct").

[25] In fact, despite claiming that standard arrangements were burdensome, Verizon made no attempt to show that its costs would be reduced in any meaningful way by either GRIP or VGRIP.

[26] Tr. at 1238-39 (D'Amico).

[27] Tr. at 1472 (Donald E. Albert) (agreeing that Verizon is much larger than Cox).

[28] Collins Direct at 12; Tr. at 1261-62 (D'Amico).

admitted during the hearing, midspan meets entirely eliminate any reason Verizon might have for either GRIP or VGRIP.[29] Further, Cox has agreed to establish direct end office trunking when traffic exceeds certain thresholds, thereby further reducing Verizon's transport costs.[30] Consequently, Verizon has not established that there is any need for GRIP or VGRIP, at least as to Cox.

On the other hand, either GRIP or VGRIP would impose significant costs on Cox. Cox would be faced with either establishing new interconnection arrangements, potentially including collocation in every Verizon end office in the Norfolk LATA, or significantly reducing its reciprocal compensation revenues. As noted above, Cox's revenues would be decreased not just because of the transport offset in either proposal, but also because Verizon would pay only the end office rate for reciprocal compensation, regardless of whether the Cox switch otherwise would be treated as a tandem. Consequently, the real costs to Cox of GRIP or VGRIP would be quite high, even though nothing about Cox's traffic or interconnection would have changed. The only way for Cox to avoid these ongoing costs would be to alter its network architecture considerably to duplicate Verizon's network. Not only would this effort be extremely expensive, but any contractual provision that required Cox to do so would be contrary to the Commission's own determinations that CLECs should not be required to duplicate ILEC networks.[31]

Further, Cox does not meet the criteria Verizon has established for when GRIP and VGRIP are necessary. Verizon's Answer characterizes these proposals as a response to CLEC

[29] Tr. at 1145 (Albert), 1232-33 (D'Amico) (stating that midspan meet arrangements with other ILECs are satisfactory to address issues raised by Verizon). Neither GRIP nor VGRIP contains any exceptions for use of midspan meets.
[30] *See* Cox Petition for Arbitration at 8-9 ("Cox Petition").
[31] Collins Direct at 9-10; *Local Competition Order,* 11 FCC Rcd at 15617-18, 15642.

decisions to choose a single POI in a LATA.[32] Cox and Verizon already have multiple POIs in Norfolk and have agreed to establish IPs at every switch where they interconnect, and those terms are reflected in the undisputed portions of their interconnection agreement.[33] Nevertheless, under both the GRIP and VGRIP language, Cox would be required to have "geographically relevant" IPs, because neither provision distinguishes between LATAs with single and multiple POIs.[34]

This is but one example of the arbitrary nature of the GRIP and VGRIP proposals. Verizon admits that it has not made any effort to impose either proposal on other ILECs, CMRS providers or interexchange carriers, and in fact even has entered into a series of interconnection agreements in Virginia in the last year that did not contain such language.[35] If GRIP or VGRIP were a matter of such urgency, then Verizon would not have consented to other interconnection agreements that did not contain these provisions.

Verizon also has not fully developed either proposal. During the hearing, it became evident that Verizon had not considered how to implement its language offsetting CLEC charges with transport and other costs.[36] This is a significant omission because the calculations that would be required would be complex and subject to great uncertainty. During the hearing, Verizon also was confused as to how a variety of other elements of its proposal would work, including what exactly would be offset against CLEC charges.[37] In the absence of resolution of these issues, adoption of Verizon's positions likely would lead to repeated disputes concerning

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[32] Verizon Answer at 7.
[33] Tr. at 1252-53 (D'Amico).
[34] September JDPL, Network Architecture, at 11, 13; November JDPL, Network Architecture, at 21-22.
[35] Cox Exhibit 4 (interconnection with other ILECs); Cox Exhibit 5 (showing Verizon interconnection agreements that do not contain proposed language); Cox Exhibit 6 (showing approval of interconnection agreements in Virginia in the last year); Tr. at 1233-34 (D'Amico).
[36] Tr. at 1361-62 (D'Amico).
[37] Tr. at 1362-63 (D'Amico).

the amounts and types of offsets permitted, which would waste the resources of all parties and of the relevant regulators. For this reason, Verizon's language does not constitute a complete proposal and should not even be considered.

The GRIP proposal is unreasonable for several additional reasons. First, the thresholds at which it would apply are entirely arbitrary. As Verizon's witness admitted, the basic 25-mile threshold is "just a number," and has no connection to how Verizon's network is engineered, to the distances Verizon carries traffic within its own network or to anything else except Verizon's desire to reduce its costs.[38] Moreover, because of the way the Verizon network is engineered, in single-tandem LATAs like Norfolk as much as 20 percent of the traffic between adjacent Verizon end offices is routed through the tandem at peak hours, and could travel far greater distances than 25 miles, so Verizon regularly bears the costs of "distant" transport even within its own network.[39]

Of course, the 25-mile threshold in GRIP does not apply if the IP is outside the local calling area, which means that GRIP could apply even when the distance between the Verizon customer and the CLEC switch is only a few miles. Worse, because local calling areas are not even remotely symmetrical, it is conceivable that a carrier with an IP five miles away from the Verizon rate center could be subject to GRIP while a carrier with an IP twenty-four miles away might not be.[40] In addition, local calling areas are subject to ongoing change, so GRIP would be a moving target, and might apply to some calls today and different calls tomorrow.[41]

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[38] Tr. at 1224-25 (D'Amico) ("just a number"), 1225 (D'Amico) (unrelated to Verizon network), 1236-37 (D'Amico) (threshold picked to reduce Verizon's costs).
[39] Tr. at 1227-28 (Albert) (stating that network is engineered so that 10-20 percent of traffic between even directly connected end offices is carried via tandems at busy hour).
[40] Tr. at 1221-22 (D'Amico) (agreeing that local calling areas are not symmetrical); *see also* Cox Exhibit 7 (depicting local calling areas in Norfolk LATA).
[41] Tr. at 1223 (D'Amico); Cox Exhibit 2, Rebuttal Testimony of Prof. Francis R. Collins, Ph.D. at 3 (Verizon has added 50 flat-rated routes in the Norfolk LATA in the last six months) ("Collins Rebuttal").

VGRIP suffers from its own deficiencies.[42] Like GRIP, VGRIP creates a moving target because a CLEC's interconnection obligations could change as Verizon's network architecture changes.[43] This is particularly significant for Cox because Verizon plans to add a new tandem to the Norfolk LATA in 2003, during the middle of the likely term of this agreement.[44] As a result, Cox could be required to collocate at Verizon end offices (or significantly reduce its reciprocal compensation payments) at the beginning of the agreement, and then have that obligation disappear during the term of the agreement.[45]

Further, in a single-tandem LATA Verizon would bear *no* transport costs under its VGRIP proposal. Instead, a simple cross-connect at the Verizon end office would be the sum of Verizon's contribution to the cost of delivering its traffic to Cox, and Cox would, in addition, be forced to bear the cost – which is substantial – for the portion of Cox's collocation space co-opted by Verizon for this purpose. Even in multiple-tandem LATAs, Verizon's costs would be limited to transporting calls from end offices where Cox was not collocated to Verizon's tandems over existing Verizon facilities.

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[42] While Verizon has characterized VGRIP as a compromise, that is not the case. For instance, VGRIP has no threshold for when interconnection is "geographically relevant," so that a CLEC could be forced to comply with VGRIP even when its switch is across the street from Verizon's switch. In the case of end office VGRIP, which applies in single-tandem LATAs, VGRIP establishes a much larger number of IPs than GRIP would require in all but the most extreme circumstances. For these reasons and others, VGRIP would impose significantly more costs on CLECs than GRIP. In addition, the initial VGRIP proposal was developed more than nineteen months ago, entirely without the involvement of Cox (or any other petitioner), so it cannot be a compromise with any of the petitioners in this proceeding.

[43] Most notably, the obligations of a CLEC under VGRIP depend on whether a LATA has one or more tandems. Although the contract language does not speak directly to this point, apparently Verizon uses the term "single-tandem LATA" to refer to LATAs where Verizon has made only one tandem available for CLEC interconnection, regardless of whether there are other tandems in the LATA. Tr. at 1322-1325 (Albert). As a consequence, in such LATAs, including Norfolk, Verizon could choose whether a CLEC subject to VGRIP is required to collocate at the tandem or at the end office.

[44] Cox Exhibit 8 (indicating that Norfolk tandem will exhaust in 2003).

[45] *See* November JDPL, Network Architecture, at 22. Moreover, if Cox decides to collocate at some of Verizon's end offices, Cox will continue to be subject to VGRIP at those end offices even after the new tandem is operational. *Id.* at 23.

VGRIP also wastes valuable collocation space. As the testimony establishes, CLECs generally do not establish collocation merely to provide an ILEC with a POI. Instead, they use collocation to provide their own services.[46] Any interconnection required by VGRIP would increase space requirements and, consequently, costs, for all affected CLECs. In addition, even as Verizon complains that it has shortages of collocation space, VGRIP inevitably would force CLECs to try to use that limited space to avoid the financial burdens of the offsets VGRIP would impose.[47]

Verizon's VGRIP proposal also contains language that would significantly alter the interconnection rights of the parties. There are three provisions in particular that are potentially of concern, two of which were included for the first time in November JDPL.[48] The first would give Verizon the right to specify additional points of interconnection based on the interconnection Cox provides to third parties, an "adoption" right that is not available to Verizon as an ILEC.[49] The second, which was not in previous Verizon filings, sets the IP for toll traffic at the same point as the IP for local traffic.[50] This provision contradicts the Verizon's testimony at the hearing that VGRIP would affect only reciprocal compensation traffic.[51] The third provision, which also was not in previous Verizon filings, governs the IP for unclassified traffic, and potentially would require the parties to engage in further negotiations as to such traffic.[52] As the history of negotiations concerning intercarrier compensation demonstrates, such a provision

[46] AT&T Exhibit 8, Rebuttal Testimony of David L. Talbott, Network Interconnection Issues at 18.
[47] Verizon Exhibit 18, Rebuttal Testimony of Donald Albert and Peter D'Amico, Network Architecture at 17 ("Albert/D'Amico Rebuttal").
[48] Although Cox discusses the two new provisions below, it does not by doing so waive any of the arguments made in the Objection concerning Cox's rights to cross examination and testimony on new issues raised by Verizon.
[49] November JDPL, Network Architecture, at 22 (Section 4.2.2.2); 47 C.F.R. § 51.305.
[50] November JDPL, Network Architecture, at 23 (Section 4.2.2.5).
[51] Tr. at 1378 (D'Amico) ("VGRIP is associated with recip comp traffic" and does not apply to intraLATA toll).
[52] November JDPL, Network Architecture, at 23 (Section 4.2.2.6).

is simply a recipe for long delays and continued disagreement between Cox and Verizon. Consequently, it should not be adopted.

Finally, Verizon has not proposed to Cox all of the language necessary to implement VGRIP in Cox's circumstances. While Verizon's proposals for WorldCom and AT&T have specific language permitting Verizon to adopt CLEC collocation arrangements at Verizon central offices as IPs, there is no such language in the proposed Cox agreement.[53] This hole in Verizon's language demonstrates further that, at least as to Cox, VGRIP is not a complete proposal, and consequently cannot be adopted.

In sum, under either GRIP or VGRIP Verizon's proposal is unlawful, would impose unreasonable costs on Cox, is not developed sufficiently to be made part of an interconnection agreement, and would have arbitrary and unreasonable results. Verizon also has failed to show that it is subject to any meaningful burden by the current regime. There is, therefore, no basis to adopt Verizon's language.

B. Cox's Proposed Provision Concerning Hand-Off to Cox Facilities Is Reasonable. [Issue I-2]

Verizon's proposal that Cox be barred from charging distance-sensitive rates for transport of Verizon-originated traffic over Cox entrance facilities must be rejected because it is divorced from both Commission policy and the reality of the relationship between Verizon and Cox in Virginia. Verizon's proposal can only be understood as a request that the Commission order Cox to subsidize Verizon's service to its customers. Verizon is in no need of such a subsidy, and its proposal for resolving Issue I-2 should be denied.

[53] *Compare* November JDPL, Network Architecture at 6 (AT&T), 16 (WorldCom) *with* 24 (Cox).

Under Verizon's proposal, Cox would be forbidden from charging distance-sensitive rates for Verizon's use of Cox entrance facilities.[54] Verizon, however, would be free to continue to charge Cox distance-sensitive rates for providing the same service to Cox.[55] This asymmetrical rate arrangement would be completely unjustified. As the Commission has stated, ILECs and CLECs are co-carriers, each of whom derive a benefit from interconnection and each of whom should be required to bear the reasonable costs of it.[56] These costs include reasonable payments for the facilities used by each carrier to deliver its traffic to the other. Verizon's proposal of an unequal rate treatment should be *prima facie* unacceptable to the Commission, and Verizon bears a heavy burden to justify it. Yet, rather than present a compelling fact pattern to support its proposal, Verizon has offered unsubstantiated fears.

Verizon asserts that the elimination of mileage-sensitive rates is essential (in the absence of its GRIP or VGRIP proposal) to protect it from the situation where a CLEC chooses a single point of interconnection in a LATA and places it far distant from the Verizon end office.[57] In such a situation, Verizon complains that it would have to pay mileage-sensitive transport costs.[58] Whatever value this argument may have as a theoretical matter, it cannot be the basis for Verizon prevailing on this issue with respect to Cox in Virginia for three reasons.

First, under Cox's proposed language an "entrance facility" is only the facility between Cox's switch and Verizon's nearest serving wire center – and the longest distance between a Cox switch and the nearest Verizon wire serving center in Virginia is four miles.[59] Verizon has

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[54] Verizon Answer at 17 ("Assuming . . . that CLECs can establish their POI and IP anywhere in a LATA, a CLEC should not be permitted to charge Verizon mileage sensitive charges").
[55] Tr. at 1255-56 (D'Amico); Albert/D'Amico Rebuttal at 12.
[56] *Local Competition Order*, 11 FCC Rcd at 15981.
[57] Verizon Answer at 17; Tr. at 1256-57 (D'Amico).
[58] *Id.*
[59] Collins Rebuttal 13; Tr. at 1028-29 (Collins).

acknowledged that this a reasonable distance for which to pay transport costs.[60] The charges that Verizon will incur in paying distance-sensitive rates over such a short distance do not justify the extreme step of allowing Verizon to collect asymmetrical rates from Cox. Indeed, Verizon has not identified any Cox rates that it believes are excessive, and there is no reason to believe Cox would charge excessive rates.[61] And regardless of the distance between a given central office and a Cox IP, Verizon is free to self-provision all of the facilities between that central office and Cox's IP. Only the entrance facility – the last leg of route – is provided by Cox.

Second, both the current interconnection agreement and the proposed interconnection agreement allow for mid-span meets, which largely eliminate the concerns raised by Verizon.[62] Cox and Verizon currently operate under a mid-span meet arrangement, and there is no evidence either party will resist such arrangements in the future. These arrangements allow Verizon to control when and if it will pay distance-sensitive rates to Cox.[63] This fact shows the fallacy of Verizon's assertions that the current arrangements give Verizon no choice but to accept distance-sensitive charges from Cox that Verizon might deem exorbitant.[64]

Third, in the new interconnection agreement, Cox already has agreed to multiple IPs, an arrangement that precludes the very type of conduct that Verizon claims to fear.[65] Verizon's unsubstantiated concerns about potential Cox misconduct could hardly form the basis for the

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[60] Tr. at 1259 (D'Amico).
[61] Cox Exhibit 22; Collins Rebuttal at 46. As a CLEC, Cox must offer pricing that is attractive enough to entice customers away from Verizon and, as a common carrier, Cox must offer similarly situated customers like pricing. Thus, the risk of excessive charges is quite low.
[62] Collins Direct at 12; Collins Rebuttal at 13-14.
[63] Tr. at 1022-24 (Collins).
[64] Direct Testimony of Donald E. Albert and Peter J. D'Amico, Network Architecture, at 17-18 ("Albert/D'Amico Direct").
[65] Tr. at 1252-53 (D'Amico) (demonstrating that Cox has committed to placing three points of interconnection in the Norfolk LATA under its proposed new interconnection agreement).